IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.11628 OF 2004

Dated: August 29, 2007

Between:

M/s. Jagdish Oil Mill, Plot No.39, IDA., Jeedimetla,
R.R. District, rep. by its Managing Partner A. Jagadishwar,
S/o. Narsaiah, aged about 50 years, Occ: Business,
R/o. Flat No.220, Ushodaya Main Road, Shapurnagar,
Hyderabad, R.R. District.

… Petitioner

And

The Chief General Manager (Operation)
Central Power Distribution Co. of A.P. Ltd.,
Singareni Bhavan, Red Hills, Hyderabad,
And others.

… Respondents

Order:

Petitioner, an Oil Mill, has filed this writ petition questioning the validity of the order dated 28-06-2004, passed by the first respondent – Chief General Manager (Operation) Central Power Distribution Co. of A.P. Ltd., in Proceedings No. CGM/OP/CPDCL/DE (O&M)/ADE/F.251 (VI)/1886.

2. I have heard learned counsel for the petitioner and learned Standing counsel appearing on behalf of respondents.

3. Petitioner, an Oil Mill situated at Plot No.39, Industrial Development Area, Jeedimetla, Ranga Reddy District, was availing supply of electricity from the respondent-company through service connection S.C.No.858 in L.T. category. The said supply was based on an agreement entered into as per the terms and conditions of supply notified by the respondent-company in B.P.Ms.No.690 dated 17-09-1975 and subsequent amendments issued thereto, from time to time, in exercise of powers under Section 49 of the Electricity Supply Act, 1948. Power supply to the petitioner was disconnected in October, 1999 and on the application of the petitioner, it was restored, on paying minimum charges, on 13-06-2001. On 23-06-2001, there was an inspection by the Assistant Divisional Engineer, Operations, the third respondent herein, and during the course of inspection, it was noticed that the meter was not responding in all the three phases when tested with 4 KW heater load at consumer cutouts. Further, having found the meter box seals in tampered condition, a case of pilferage of energy was registered against the petitioner. Immediately thereafter, third respondent has made provisional assessment of loss of energy at Rs.8,73,807/-. Thereafter, a show cause notice was issued to the petitioner by the Superintending Engineer, Electrical, the second respondent herein, and after considering the explanation filed it, the primary authority, i.e. the second respondent, passed order dated 07-06-2002 holding that the petitioner did indulge in pilferage of energy and assessed the energy pilfered by the petitioner at 4,200 units per month from 10-98 to 10-99. After deducting the recorded consumption, value of pilfered units of energy was arrived at 33875 and an amount

of Rs.3,72,625/- was demanded. As against the same, petitioner preferred an appeal to the Chief General Manager, Operation, APCPDCL, the first respondent herein. The said authority has arrived at the average monthly consumption at 2945 units per month.

4. This writ petition is filed, primarily, questioning the validity of the order dated 28-06-2004 on the ground that the average monthly consumption, which is modified by the appellate authority and fixed at 2945 units per month, is not correct.

5. Learned counsel for the petitioner submits that the average monthly consumption for the period from 1-95 to 10-99 is only 2500 units, however, the appellate authority, by taking the readings from 1-95 to 10-95 alone, has modified the average monthly consumption at 2945 units per month.

6. Respondents have filed counter affidavit, generally, denying the allegations of the petitioner and stating that the appellate authority has given opportunity to the petitioner before disposing of the appeal filed by it.

7. Though it is specifically pleaded in the affidavit filed in support of the writ petition that the average monthly consumption was not correctly arrived at, and that the same is not in accordance with the terms and conditions of supply framed under the Act, there is no specific answer in the counter affidavit in that regard.

8. Even in the order of the appellate authority, while modifying the average monthly consumption at 2945 units, specific finding is recorded that consumption pattern of service is examined from 1-95 to 10-95.

9. Learned Standing Counsel appearing for the respondents submits that records are not presently available, however, he has produced the calculation sheet giving consumption particulars. As per the calculation sheet, consumption was taken from the month of 01-95 to 10-99 and average consumption for the said period was arrived at 2845 units. The said figure is not at all tallying with the figure as mentioned by the appellate authority in its order, i.e. 2945 units. Though it is submitted by learned counsel that readings are taken for four years, however, there is a mistake with regard to mentioning of year.

10. Further, it is submitted that out of the total demand of Rs.2,06,965/-, half of the said amount has already been deposited as per the orders of the appellate authority.

11. As much as average consumption recorded, is not clear either from the calculation sheet filed by the learned Standing Counsel appearing for the respondents or from the averments in the counter affidavit, I deem it appropriate to set aside the order dated 28-06-2004 passed by the first respondent and it is accordingly set aside. The matter is remanded to the first respondent/appellate authority for reconsideration. The appellate authority shall examine the plea of the petitioner with regard to average monthly consumption and pass appropriate orders by issuing notice to the petitioner and fixing a date for hearing. Half of the amount paid by the petitioner will be subject to the orders to be passed by the appellate authority. No coercive steps shall be taken against the petitioner till the disposal of the appeal and once the appeal is disposed of, it is open for the respondents to collect the differential amount, if any, from the petitioner.

12. The writ petition is allowed to the extent indicated above.

No order as to costs.

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JUSTICE R. SUBHASH REDDY.

August 29, 2007
MRR